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Module 3



VESC Program Elements, Law Overview for Plan Reviewers

Module 3 contents

3a. Overview-Roles of VESCP Officials



3b. Program Statutory requirements, Law overview

3c. Program Review by DEQ



Module 3a. Roles of VESCP staff



Roles and Responsibilities in a VESCP– Program Administrator

- Ensures plan review, approval, inspections, and enforcement are being properly conducted
- reporting;
- record keeping;
- fee collections; and
- Ordinance updates





Roles and Responsibilities in a VESCP– Inspector

- Conducts periodic inspections of active construction sites to ensure proper installation, construction, and function of BMPs and other ESC measures
- Documentation of inspection
- Enforcement





Roles and Responsibilities in a VESCP– Plan Reviewer

- Reviews ESC plans to ensure they adhere to the VESC Regulations, ESC Handbook, and local ordinance(s)





Roles and Responsibilities in a VESCP– Combined Administrator



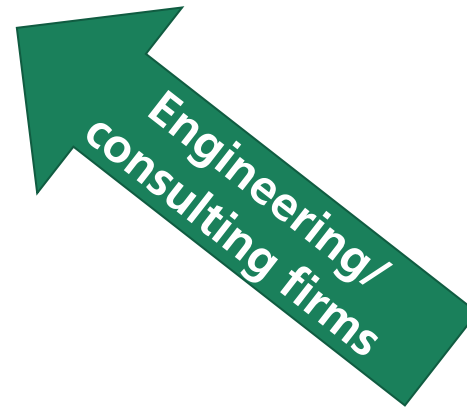
“who may be the same person”



Assistance with VESCP responsibilities

The VESCP is authorized to use an outside entity to assist with the administration, plan review and inspection of land disturbing activities.

**Detailed in
62.1-44.15:58-B**



Module 3b.



Statutory Requirements: Virginia Erosion and Sediment Control Law



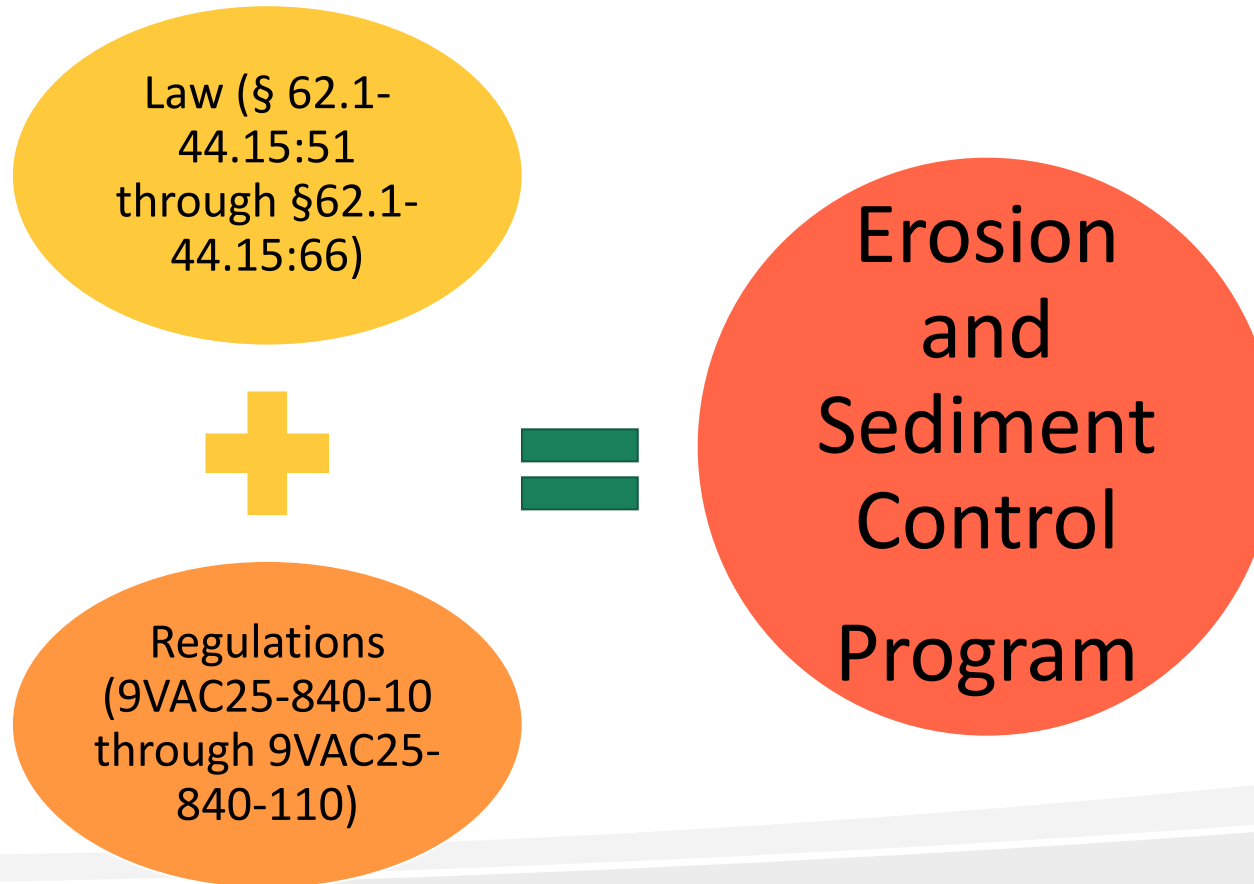
Purpose of the Law

The stated purpose of the law is “for the effective control of soil erosion, sediment deposition, and non-agricultural runoff to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources”





Erosion and Sediment Control in Virginia





Importance of Understanding the Law

- The ESC Law is the legal basis for the ESC program.
- The Law establishes the rights and responsibilities of: VESCP and the public and private land users who must comply.
- A good understanding of the Law helps to effectively implement local ESC programs.



Importance of Understanding the Law

- Unless local officials act within the limits of the law, enforcement actions may become unsuccessful.
- Negligent or inappropriate application of an ESC program may result in legal action against the locality.
- Training local program officials and experience will help improve local program consistency.



Definitions (Section 62.1-44.15:51.)

Agreement-in-lieu of a plan

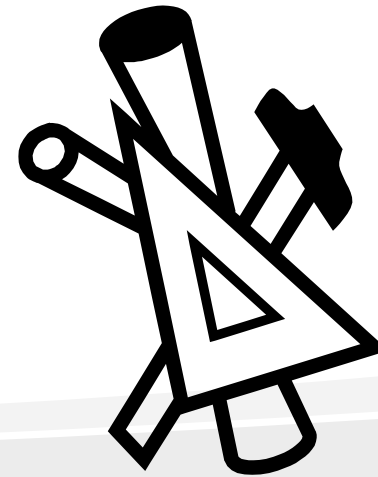
A contract between plan approving authority and the owner which specifies ESC measures to be implemented in the construction of a single family dwelling



Definitions (Section 62.1-44.15:51.)

Erosion and Sediment Control (ESC) plan

a document containing conservation practices and policies for controlling erosion on regulated land disturbing activities...





Definitions (Section 62.1-44.15:51.)

Erosion impact area

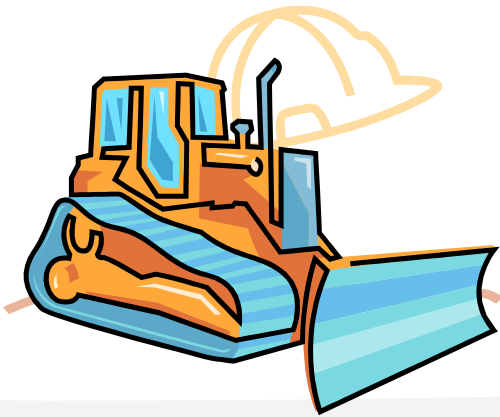
- Area of land not associated with a current land-disturbing activity
-but subject to persistent erosion resulting in delivery of sediment onto neighboring properties or state waters.
- Does not apply to any lot 10,000 square feet or less used for residential purposes or to shoreline erosion as a result of wave action.



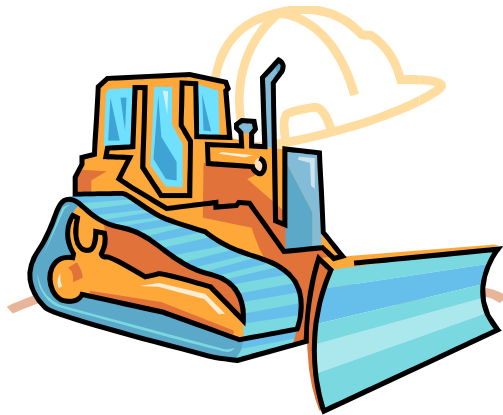
Definitions (Section 62.1-44.15:51.)

Land-disturbing activity

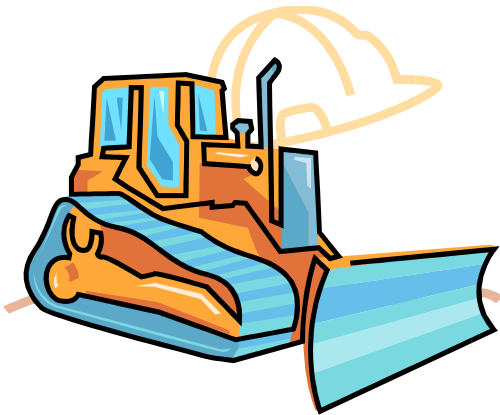
Any man-made change to the land which may result in soil erosion from water or wind and the movement of sediments into state waters or onto state lands including but not limited to ;



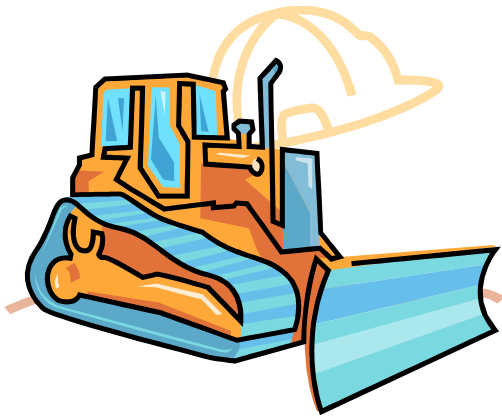
..... clearing



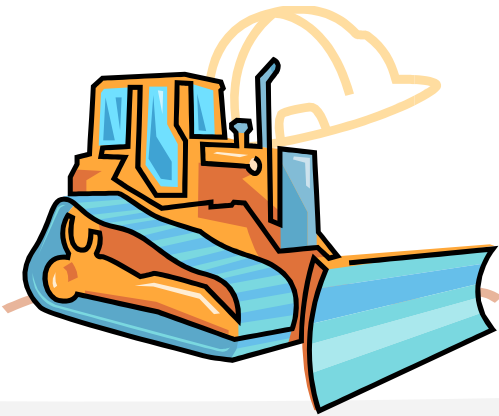
..... grading,



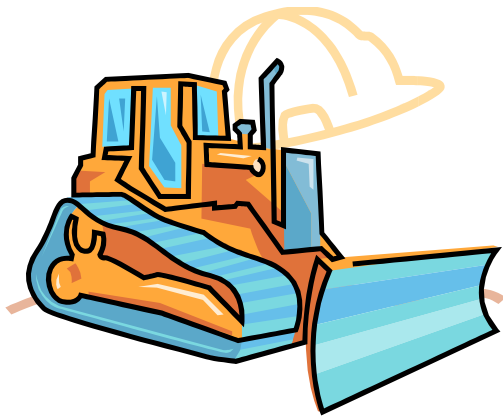
..... excavating,



.....transporting,



.....and filling of land.





But shall not include:

Minor land-disturbing activities such as:

- home gardens
- landscaping
- repairs and maintenance work





But shall not include:

- Individual Service Connections
- Installation, maintenance or repair of any underground public utility lines on an existing hard surface road, street or sidewalk confined to that area
- Septic tank or drainage field lines unless included in an overall plan



But shall not include:

Permitted Surface or deep mining





But shall not include:

Permitted exploration
or drilling for oil or gas
including the well site,
roads, feeder lines and
off site disposal





But shall not include:

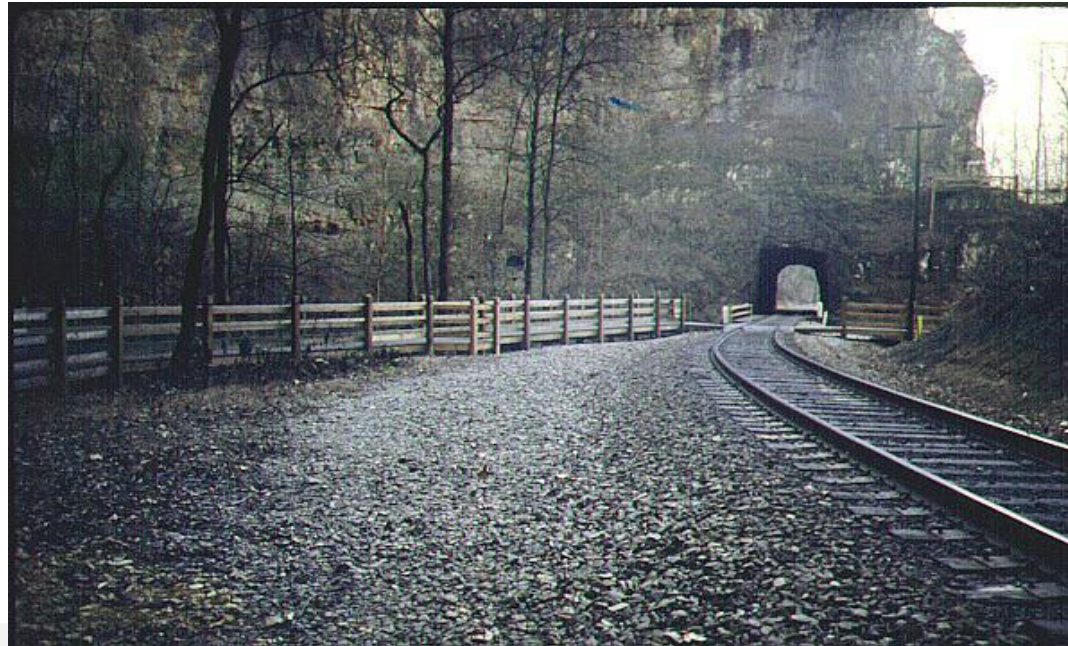
- Tilling, planting, or harvesting of agricultural or horticultural, or forest crops
- Feed lot operations
- Engineering operations
- As additionally set forth by the Board in regulation





But shall not include:

Repairing or rebuilding of tracks, right-of-ways, bridges, etc. of a railroad company





But shall not include:

Agricultural
engineering
operations→

- Terraces
- De-silting basins
- Contour
cultivating
- Irrigation ponds





But shall not include:

If disturbed land:

- < 10,000 square feet* (outside Chesapeake Bay Preservation Area (CBPA))
- <2,500 square feet (land subject to CPBA)
- *Authorized by law to reduce this amount





But shall not include:

Installation of fence or sign posts





But shall not include:

Shore erosion control projects on tidal waters – when within the regulatory authority of local wetlands boards, COE, VMRC





But shall not include:

Emergency work
to protect life,
limb, or
property

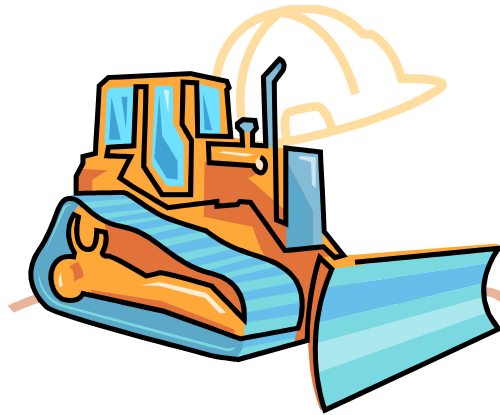




Approved Plan Required



**Detailed in 62.1-
44.15:55-A**



- **Approved ESC plan before starting land disturbing activities**
- **Evidence of Stormwater Management program coverage (after July 1, 2014)**



Annual Standards & Specifications



Annual specifications required for:

- Electric
- telephone companies
- natural gas pipeline companies
- railroad companies

**Detailed in
62.1-44.15:55-D**

Operate a VESCP through
submittal of annual specifications

- State entities
- Federal entities
- Linear projects

Annual Standards and Specifications
(Page 8)

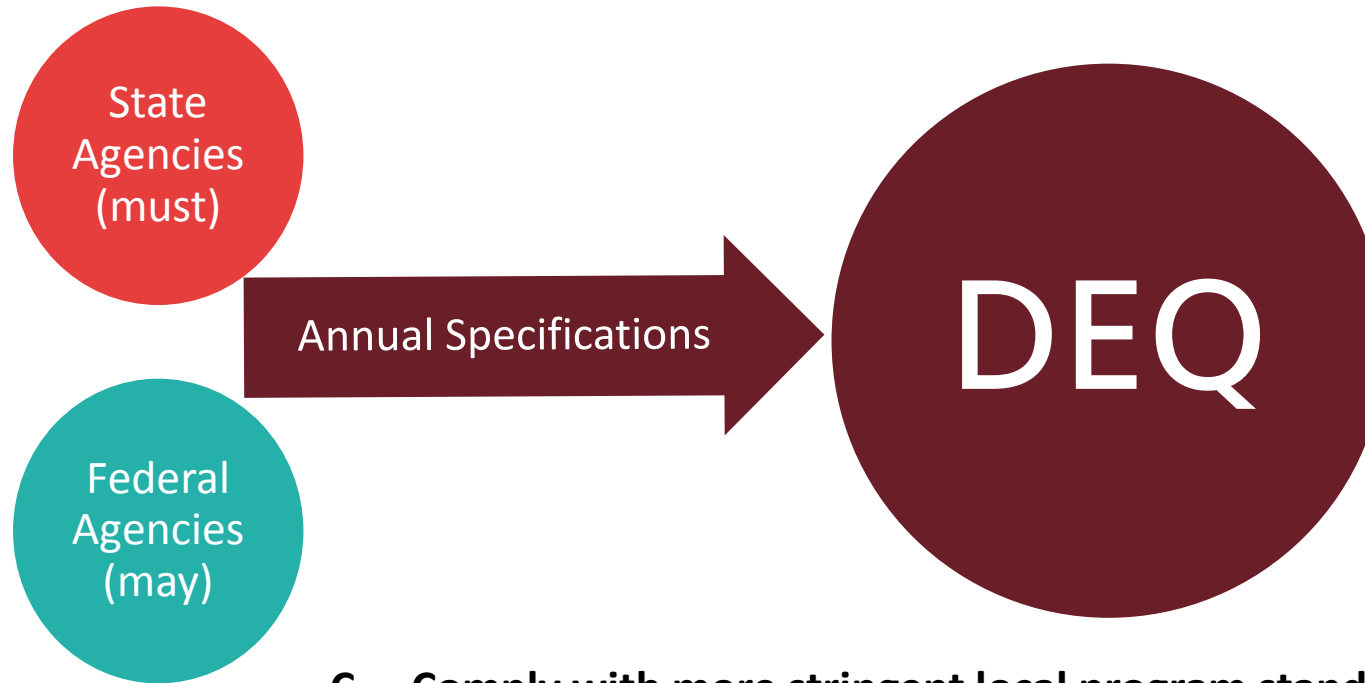
Must submit	May submit
Electric companies	Authorities created under <u>§15.2-5102</u> (ex. water or sewer authority)
Natural gas companies	State and federal entities
Telephone utility companies	
Interstate and intrastate natural gas pipeline companies	Wetland mitigation or stream restoration bank projects
Railroad companies	
Applies to these activities	
Construction, installation, or maintenance of:	
<ul style="list-style-type: none">• Electric transmission lines• Water and sewer lines	<ul style="list-style-type: none">• Natural gas lines• Telephone utility lines
Railroad company construction of:	
<ul style="list-style-type: none">• Tracks• Bridges• Other related structures and facilities	<ul style="list-style-type: none">• Rights-of-way• Communication facilities



State Agency and Federal Projects



**Detailed in 62.1-
44.15:56 C**



C. Comply with more stringent local program standards.



An important thing to consider for approval of an ESC plan, it must be....what?



What is an Adequate Plan?



- Does the plan meet Minimum Standards in the Erosion and Sediment Control Regulations and the VESCL?
- Does it meet more stringent requirements of VESCP authority (if applicable)?
- Are all problems of erosion and sedimentation adequately addressed?



Approved Plan Timeline



**Detailed in 62.1-
44.15:55-B**



- **60 days**
- **Provided written comments if inadequate within 45 days**
- **Review of resubmitted plan in 45 days**



Plan Approval Timeline (RLD)



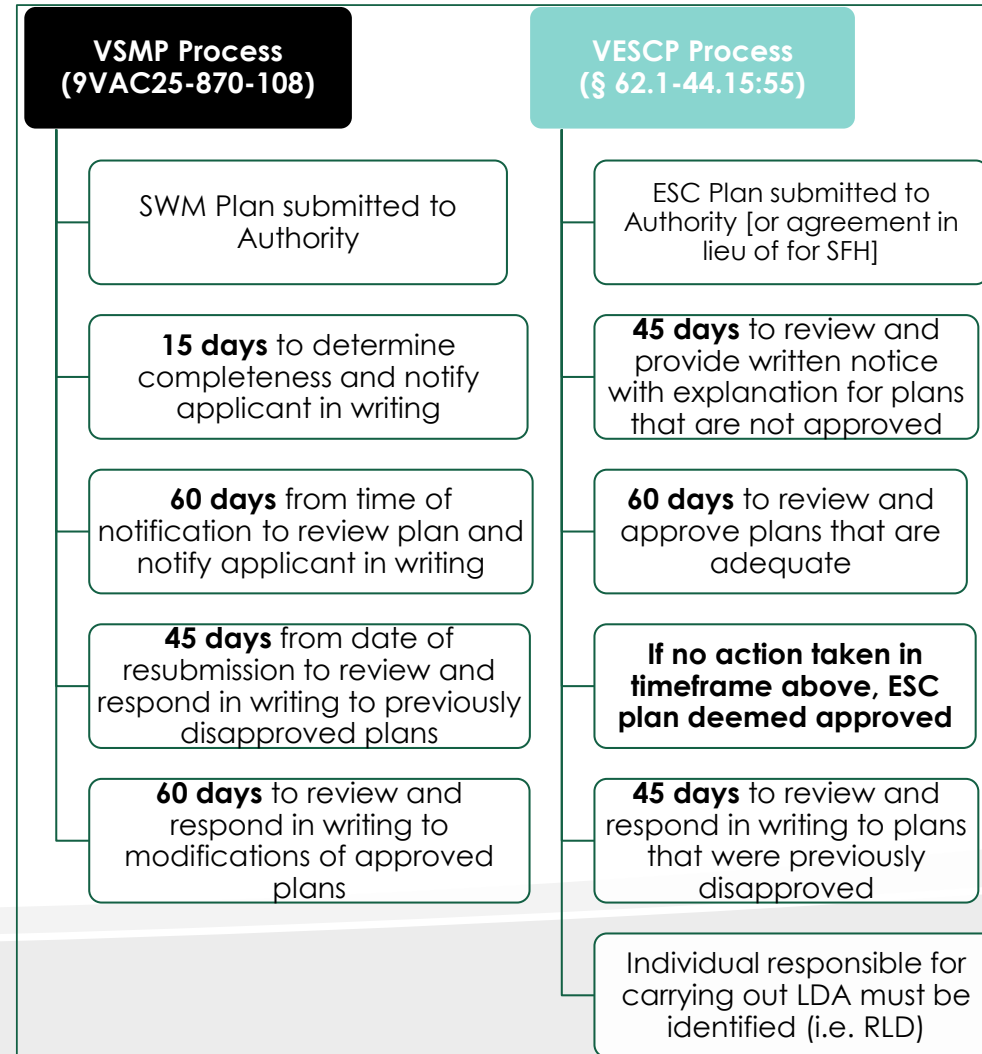
**Detailed in 62.1-
44.15:55-B**

**Name of the RLD needs to be
provided at time of plan
approval**

**Option to waive RLD
certificate for construction of
single-family homes under
agreements in lieu of plans**



Comparison of VSMP & VESCP Plan Approval





Power and duties of the State Water Control Board



Detailed in 62.1-
44.15:52

Power and duties of the State Water Control Board

- Develop an erosion and sediment control program
- Adopt regulations for the effective control of soil erosion, sediment deposition, and nonagricultural runoff
- Provide technical assistance for VESCP authorities



Power and duties of the State Water Control Board



**Detailed in 62.1-
44.15:52**

Power and duties of the State Water Control Board

- Provide technical assistance for VESCP authorities
- Establish minimum standards for program effectiveness
- Approve VESCP authorities
- Conduct periodic program compliance reviews
- Issue certificates of competence



Change of Plan

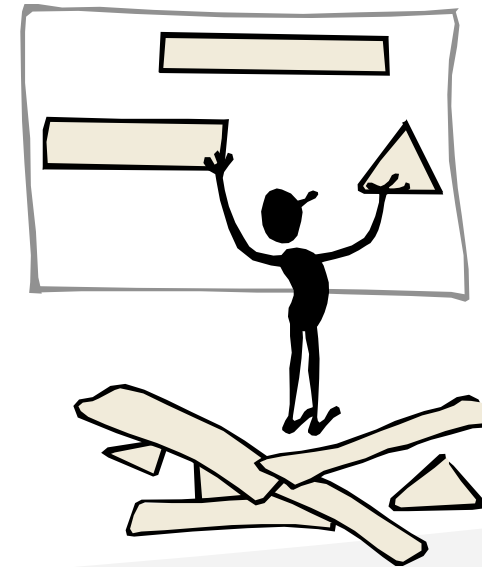


**Detailed in 62.1-
44.15:55-C**

Plan may be changed when:

- 1. Inspection reveals inadequacies**
- 2. Change in circumstances**

**(But all changes need to be consistent with the
law, regulations and specifications)**





Additional Approved Plan Requirements

- (A) Provides option for submittal of multi-jurisdiction projects (can be done by the Department)**
- (G) Identifies the land owner as responsible for plan submittal & approval.**



Detailed in 62.1-44.15:55-A, F & G



Permit Issuance



Detailed in 62.1-44.15:55-A, F & G

Before any agency can issue grading, building, or other permits for activities involving LDAs regulated under the VESCL, the applicant must include an approved ESC plan and certification that the plan will be followed

(G) Identifies the land owner as responsible for plan submittal & approval.



Security for performance

Detailed in 62.1-
44.15:57



- Provides option to require bonds or surety
- Requires return of unused bonds or surety within 60 days of adequate stabilization



Inspections



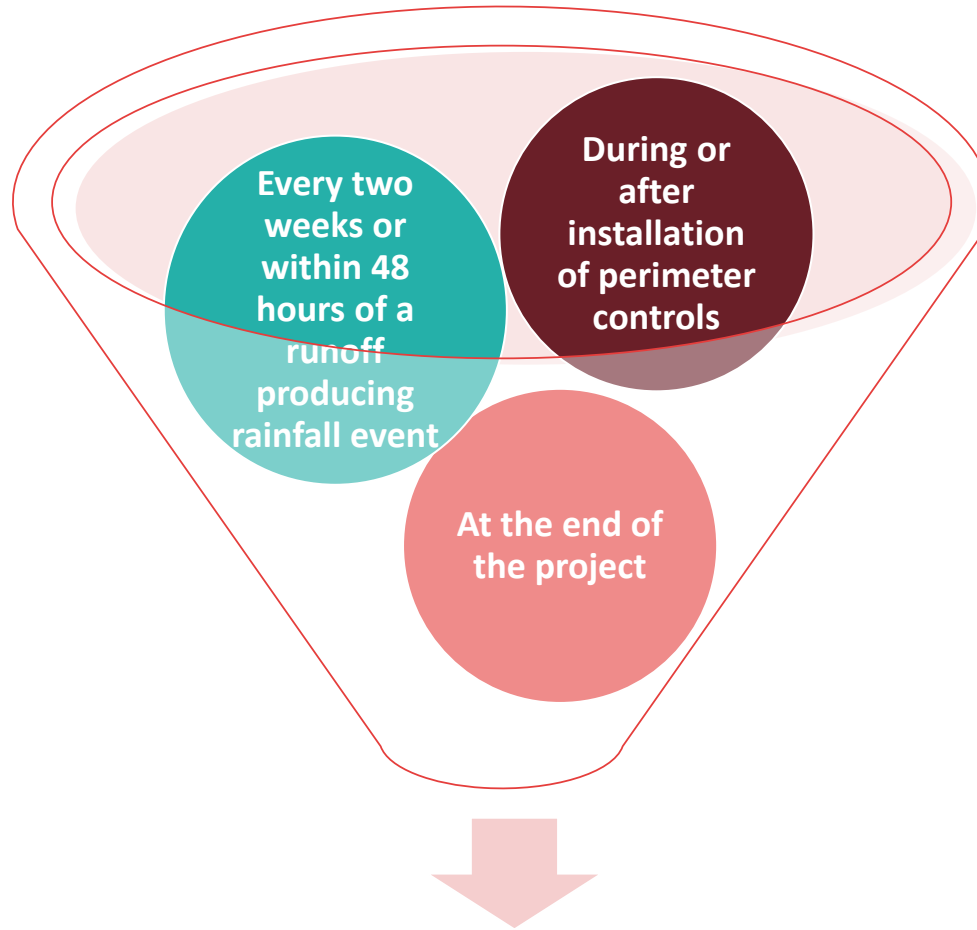
**Detailed in 62.1-
44.15:58**



**Requires inspections of land
disturbing activities by program
authority.**



Regulations
Detailed in
9VAC25-840-60



Inspections



Authorization for more stringent standards



**Detailed in
62.1-44.15:65**

- Local programs may require more stringent standards
- The more stringent standards need to have a defensible or scientific basis
- Must go through the public hearing process at the locality



Scientific basis for more stringent standards



**Detailed in
62.1-44.15:65**

- Prevent further degradation to water resources
- Address total maximum daily load requirements
- Protect exceptional state waters
- Address specific existing water pollution including:
 1. Nutrient and sediment loadings
 2. Stream channel erosion
 3. Depleted groundwater resources
 4. Excessive localized flooding within the watershed



Right of entry



Detailed in 62.1-
44.15:60

Provides the right of entry by the Department or VESCP of any property for the inspection and enforcement.





Monitoring Reports



**Detailed in 62.1-
44.15:58**



**Authority may require
monitoring reports from
the the person
responsible for the project
(RLD).**



Erosion and Sediment Control Enforcement

- **The local VESCP authority must have procedures in place to conduct enforcement of the ESC Ordinance**



Enforcement Overview

A. “Notice to Comply” procedure

C. “Stop Work Order” procedure

- After notice to comply, unless-
- LDA without an approved plan
- Imminent danger
- Length of time Stop Work is in effect

Allows for other enforcement action to commence...

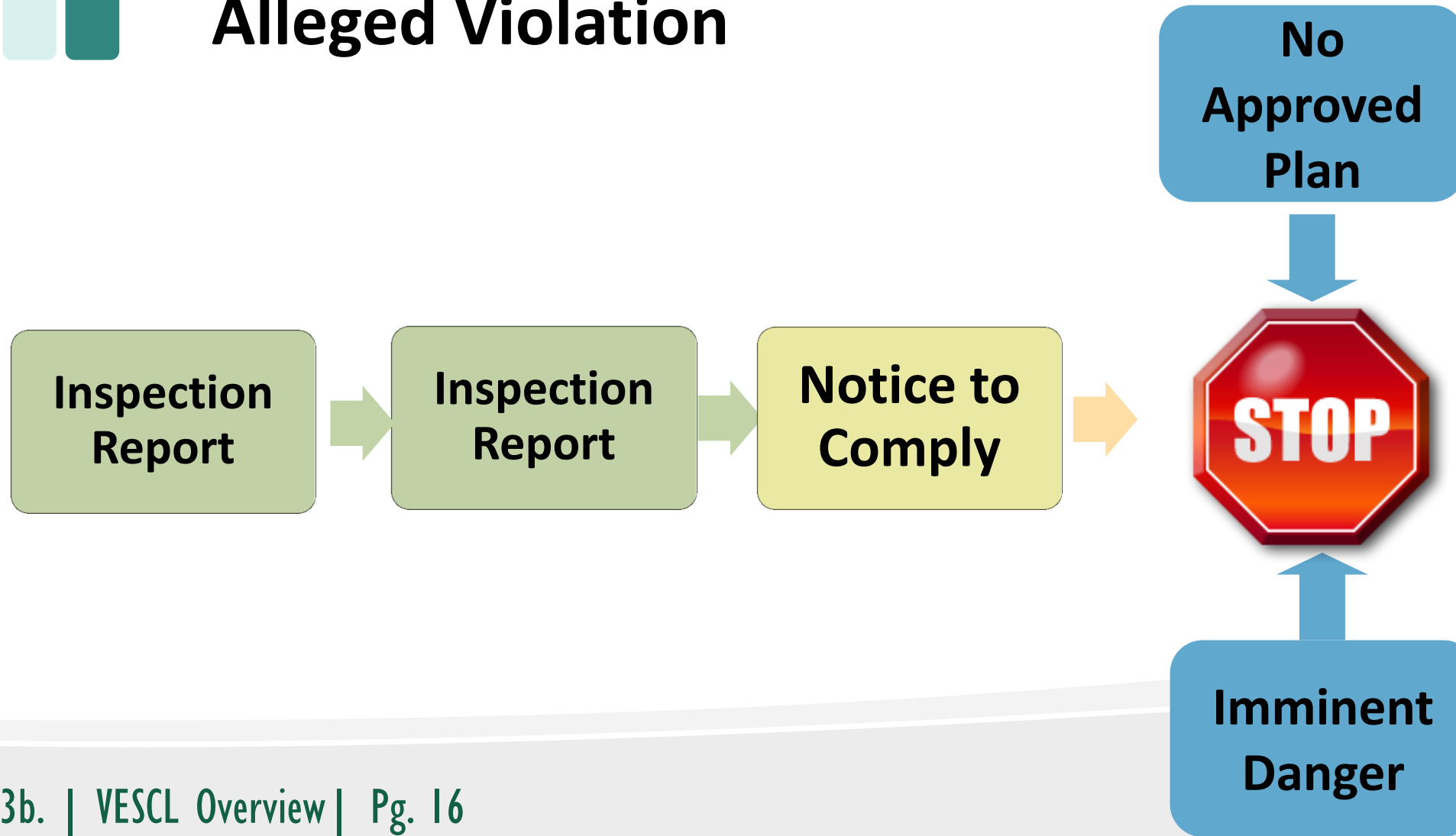


Detailed in 62.1-44.15:58-A & C





Alleged Violation





Appealing a Stop Work Order



Detailed in 62.1-
44.15:58

The owner may appeal the
issuance of a stop work order
to the circuit court





**Detailed in 62.1-
44.15:58**



Lifting a Stop Work Order

Upon completion and approval of corrective action or obtaining an approved plan or required permits, the stop work order shall be immediately lifted

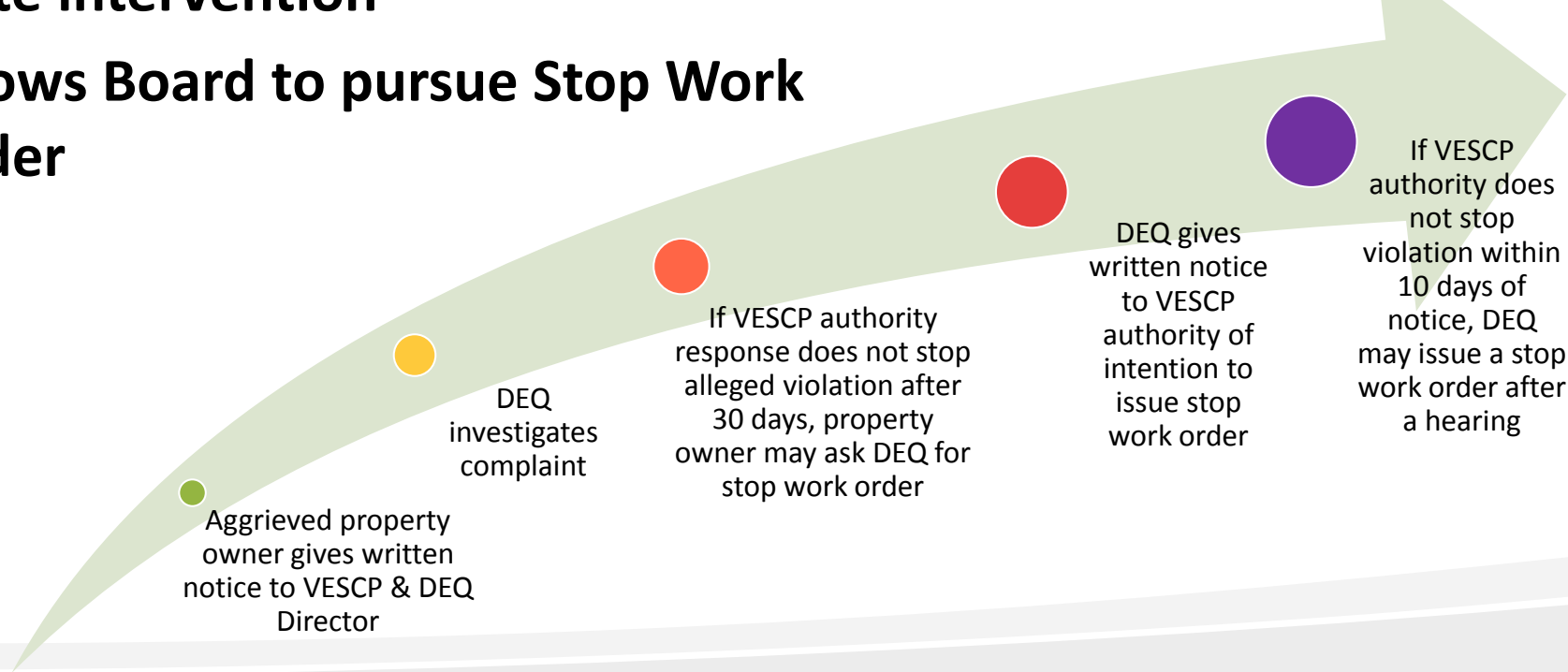


Stop Work Order By Board



- Allows property owners to request state intervention
- Allows Board to pursue Stop Work Order

Detailed in 62.1-44.15:64

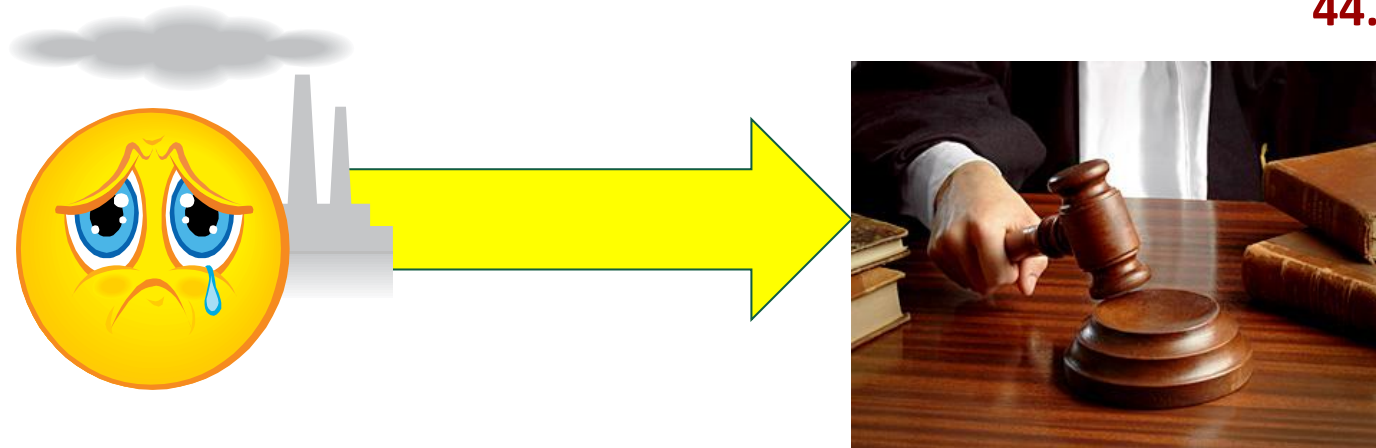




Judicial Appeals



Detailed in 62.1-
44.15:62



**Final decisions of local and state program
authorities to be judicially appealed**



Injunctive relief (court ordered)



**Detailed in
62.1-44.15:
63-C**

**Affected Property
Owner**

**Designated Land
Owner, VESCP
Authority, DEQ**

Circuit Court

Write letter

No response in 15 days



Civil Penalties

A VESCP authority may adopt a schedule of civil penalties through your local ordinance or local regulation.



Penalties can be a given for violations of the following:

- **VESCL**
- **Regulations (Minimum Standards)**
- **Failure to comply with an order of the Board**
- **Program (VESCP) requirements**
- **Permit conditions**





Civil Penalties

Civil Penalty Amounts:

- One violation, between \$100.00 & \$1,000.00
- Each day is a separate offense
- Total maximum cannot exceed \$10,000.00





Civil Penalties



Civil Penalties

Behavior	Assessing penalty	Penalty
Violated, failed, neglected or refused to obey any of the following: VESCL Regulations or order of the Board Local VESCP authority order, notice or requirement DEQ order, notice or requirement Permit	Court may assess a civil penalty of \$2,000/day for each violation.	Subsection K of § <u>62.1- 44.15:53.</u> Penalties assessed by court paid into treasury of locality where project located. If locality or its agent is the violation, penalties paid into state treasury

*** Civil penalties
are in lieu of
criminal
prosecution by
the VESCP
authority**



Penalties, injunctions, and other legal actions



Detailed in 62.1-
44.15:63

- Violators shall be guilty of a Class 1 misdemeanor





Module 3c.

DEQ Compliance Review of a VESCP



Local ESC Programs



**Detailed in
62.1-44.15:54-C**

VESCP

**Part C - Local programs shall
be approved by the Board**



Local ESC Programs



**Detailed in
62.1-44.15:54-F**

If a compliance review by the Board reveals that the program is inconsistent:

The Board shall establish a schedule for the VESCP authority to come in compliance.

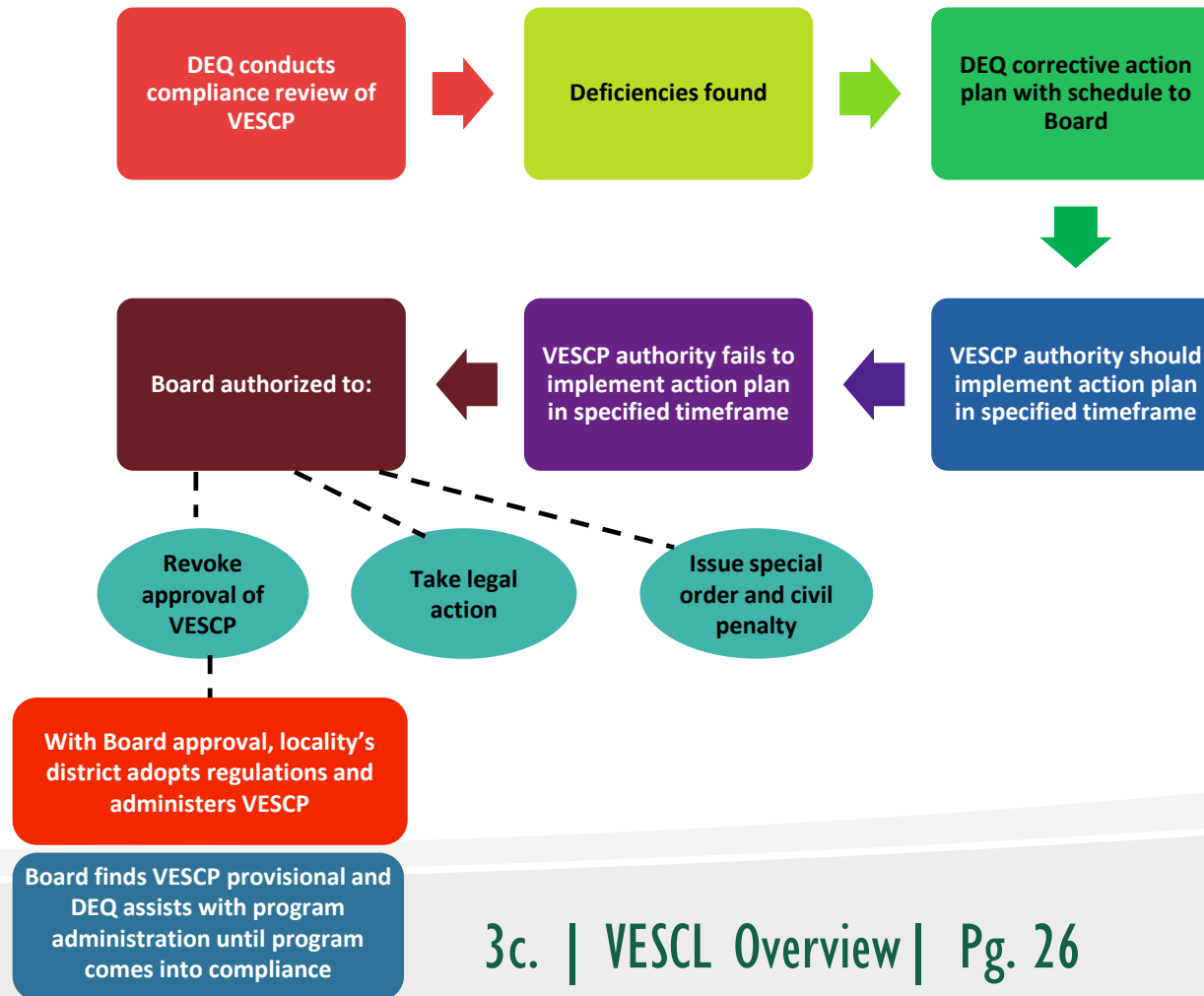
The Board may impose civil penalties, revoke program approval, or take legal action.



Local ESC Programs



**Detailed in
62.1-44.15:54**





Local ESC Programs



**Detailed in
62.1-44.15:54-H**

**Part H – allows provisional operation of
the VESCP**



Reporting to DEQ



Listing of all LDA for which
the authority has approved
an ESC plan



**Detailed in
62.1-44.15:59**

VESCP Authority

DEQ

On a schedule established
by DEQ





End of Module 2

QUESTIONS?